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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 232.

R. M. WHITE

versus

A. F. LEOVY ET ALS.

BRIEF FOR DEFENDANT IN ERROR.

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STATEMENT OF FACTS.

This case is one of alleged conflict in patents to land, both issued by the State of Louisiana. Both parties claim from the State and admit and aver the title of the State, their vendor.

In the year 1890, Township Twenty-two South, Range Thirty-one East, of the Southeastern Land District of Louisiana, a township situated in the Parish of Plaquemines, on the west bank of the Mississippi River, about seventy-five miles below New Orleans, contained about twenty thousand acres of land; the remainder of the township being shallow bays and passes. This is abundantly proved by the testimony of a surveyor, who made the survey for the express purpose (Bradford, Rec. p. 42), and of R. S. Leovy, a nominal defendant and an old resident (p. 49), and by a survey made and introduced in evidence by

White, and valuable at least as an admission; and by Connelly's map, showing about 3840 acres in the front part of the township, and defendants' patents to 5020 acres, in the rear of the township; and by much other evidence. The fact is notorious and beyond dispute.

All this land, except a narrow strip on the river, not concerned in this suit, belonged to the State of Louisiana. It was acquired by grants of the swamp lands by Acts of Congress of 1849 and 1850 (9 Stat. at Large, pp. 352, 519), and was decided to be grants *in praesenti*. (Wright vs. Rosebery, 121 U. S. 488). Both parties, however, claiming from the State, its title is not at issue and it has never been questioned, though the State has sold immense tracts of the lands. The only map of it, however, in the State Land Office, in 1890, was one made by Connelly, a United States Surveyor, in 1836. This map showed a narrow line of small lots fronting on the river surveyed by Connelly; a tract of sea-marsh behind these small lots of about 3840 acres in extent (estimated but not surveyed), covering about one-fifth of the width, and, behind this sea-marsh a shallow, narrow Bay, marked "West Bay." No other land was shown on the plat, which did not pretend to reach the rear of the township, the corners of which had been established by Connelly. There is no question that this plat accurately indicated the conditions *at the time* of Connelly's survey. There is, likewise, no question that shortly subsequent to his survey, and long prior to 1890, a crevasse occurred which was never closed and, in the course of a few years, filled the rear of the township with shallow marsh or prairie land.

It remains to explain that this being the condition of

facts in 1890, the Land Register was at that time (by Act of 1880, p. 85) authorized to sell the low marsh or prairie lands in Louisiana at twelve and a half cents per acre; and by that Act it was required that he designate the land sold, as usual, by township, section and fractional section. Under this law the whole Connelly tract of sea-marsh could be sold for about four hundred and eighty dollars ($480), and the whole township, if of the marsh or prairie kind, for about three thousand dollars.

Under these conditions of law and fact, R. M. White bought, in 1890, 3840 acres of land from the State Land Register. He paid for it at the rate of twelve and a half cents per acre; and his name, as the purchaser, was written on the Connelly plat of sea-marsh, between the tract designated thereon as West Bay and the small front lots.

His patent reads as follows:

"All the unsurveyed marsh west of lots fronting on the right bank of the Mississippi except Section No. 16, in township twenty-two south, of range thirty-one east, in the Southeastern (west of the river) land district, *containing thirty-eight hundred and forty acres*, according to the *official plat* of the survey of said lands in the State Land Office." (p. 65).

The field notes of Connelly are also in evidence, and they show that, while making a careful survey of the little front lots, his diagram of the strip of marsh between them and West Bay, as it then existed, was founded on estimation, the marsh being then impassable.

It will thus be seen that the Connelly strip corresponds with the White patent in every particular; White's name being marked on it, with *references to the patent* and certificate; the price and number of acres corresponding;

and it being the only unsurveyed sea-marsh shown on the only map of survey of that township in the State Land Office at the time White purchased. And the *price*, as shown by his receipt filed by White was for 3840 acres and fees of land office. (p. 21). He did not pay for an acre more. A similar patent in the adjoining township (in which White was the vendor of the defendant) was precisely so construed in the case of State vs. Buck, 46 Louisiana Annual, p. 656.

Some years thereafter Henry J. Leovy purchased and paid for, by description, by section and quarter section, certain lands in the rear of the township. (p. 54). It necessarily results from the numbers of these sections that they are in the rear (or western part) of the township. The patents recite that they were made with reference to an official map of survey. We think, therefore, there can be no objection to our stating the fact that a survey had been made in the meantime. The official statement in the patent, uncontradicted by any evidence, is conclusive on that point.

It necessarily results from these facts (as stated by the State Supreme Court), that between the rear of the Connelly tract of sea-marsh and nearly all of Mr. Leovy's purchases, about two miles intervened. In no case did they touch the Connelly patent.

Under these circumstances, R. M. White brought suit in the year 1893 in the local State Court for Plaquemines Parish, alleging that H. J. Leovy (and A. F. Leovy and R. S. Leovy, nominal defendants) had slandered the title to his lands. He gave an exceedingly vague description of the lands claimed by him; but, subsequently, by supplemental petition, made his claim more definite by annexing the Connelly map and field notes, and by adding to his peti-

tion the words, "containing 3840 acres, according to the official plat of the survey of said lands in the State Land Office."

Defendant answered, denying any trespass upon or slander of title to the lands so described, and alleging, in counter-claim or reconvention, trespass upon and slander of title to the lands of defendant above described, and situated far in the rear of plaintiff's lands.

As the plat filed and repeatedly relied on in evidence by Mr. White bore his name on the Connelly tract of sea-marsh, and designated the land behind it as West Bay, and was referred to in the patent as part of his description of the land sold, and as Mr. Leovy claimed lands far in the rear of the Connelly tract, it would seem that there could be no possible conflict between their claims. The District Judge practically so held, granting to each an injunction in the line of his respective pleadings.

The *case so remained for three years*, and, in the meantime, by an act *in pais*, R. M. White still further made manifest that he claimed, under his patent, only the Connelly tract. He bought from the State on March 12th, 1896, a part of a section of sea-marsh, in the rear of the township, immediately adjoining that of Mr. Leovy. (Rec. p. 66).

Three years after, however, the personnel of the Parish Court having changed, White forced the case to a final trial; and the Court thereupon dismissed defendant's counter-claim and made plaintiff's injunction final, amending it by eliminating the words "according to official plat," although those words had been deliberately introduced by plaintiff into his supplemental petition; thus giving him a

roving title to 3840 acres of sea-marsh to be located anywhere in the township. From this decision the defendants appealed; and it was reversed by a unanimous Court; the State Supreme Court deciding that the patents of plaintiff and defendants were for two distinct tracts of land widely separated; that Mr. Leovy had never slandered title to, or trespassed upon Mr. White's lands; and, therefore, dismissing White's suit, and maintaining defendant's title to the lands patented to him.

The decision was precisely the same as that in the case of the State vs. Buck et als. (46 La. An., p. 646), involving the same points and referred to by the Court as disposing of them.

From this judgment White has sued out this writ of error.

The Law.

As to Existence of Federal Questions, and Jurisdiction of this Court.

The claims of plaintiff in error as to the existence of Federal questions in the case, relate, in the first place, to some alleged impairment of the obligation of the contract of sale. As there was, at no time, from a period prior to the purchase by Mr. White, to a period subsequent to all the purchases by Mr. Leovy, any change whatever in the laws of Louisiana in anywise relative to this subject, and as there has been no complaint as to any action by anybody or officer possessing powers remotely resembling legislative powers, it would seem too clear for discussion that the clause prohibiting the States from passing any law impairing the obligation of contracts could not have been vio-

lated. See Lehigh Co. vs. Easton, 121 U. S. 388, and numerous cases therein cited.

The second contention is that the act of the Land Register in issuing a patent to Mr. Leovy divested Mr. White, "without due process of law," of his title to the land in question.

It might be conceded, for the sake of argument, that an action by an administrative officer, actually dispossessing any person of life, liberty or property, or even such action as must be by the State Courts regarded as *res judicata* upon the question settled thereby, would, if taken without due process of law, be violative of the 14th Amendment to the U. S. Constitution. But we submit that the mere erroneous issuance of a second patent could not be an action of this character. Such a paper, if in reality covering the same lands as a prior patent, would be worthless in every court as against the prior patent; particularly so in a case like the present, where no action was taken or attempted, cancelling the prior patent.

The law, as above stated, is drawn from two late decisions of this Court, supported by many undisputed authorities. In Davidson vs. New Orleans, 96 U. S. pp. 97, 105, this Court said:

"It is not possible to hold that a party has, without due process of law, been deprived of his property, when, as regards the issues affecting it, he has, by the laws of the State, a fair trial in a court of justice, according to the modes of proceedings applicable to such a case. This was clearly stated by this Court, speaking by the Chief Justice, in Kennard vs. Morgan (92 U. S. 480), and, in substance, repeated at the present term in McMillan vs. Anderson (95 *Id.* 37)."

And in Castillo vs. McConnico (168 U. S. 674), it was held, in substance, that in order to show that a litigant had been deprived of his property without due process of law, it was necessary to show that, under the State jurisprudence, the proceedings of which he complains were conclusive on the courts.

Now, in this very case, the Supreme Court of Louisiana, far from holding that a second patent was conclusive upon the courts, as against the first patent, expressly said, that if the patents related to the same lands, the second patent was utterly null and void, and it thereupon proceeded to discuss the purely local question previously decided in State of La. vs. Buck et als. (46 La. An. p. 656), as to the quantity of land conveyed by such a patent as that issued to White in this case. Deciding, as it did, that White's patent did not cover any of the land subsequently patented to defendant, the alleged Federal question was utterly eliminated from the case.

We submit that the case having been thus decided on a purely local ground, this Court has no jurisdiction. Dibble vs. Bellingham Co., 163 U. S. p. 63.

"It is likewise settled law that, where the record discloses that, if a question has been raised and decided adversely to a party claiming the benefit of a provision of the Constitution or laws of the United States, another question, not Federal, has been also raised and decided against such party, and the decision of the latter question is sufficient, notwithstanding the Federal question, to sustain the judgment, this Court will not review the judgment." Eustis vs. Bolles, 150 U. S. 361, 366, citing Klinger vs. Missouri, 13 Wall. 257, 263; Johnson vs. Risk, 137 U. S. 300; Murray vs. Charleston, 96 U. S. 432, 441; Jenkins vs. Lowenthal, 110 U. S. 222; Hale vs. Akers, 132 U. S. 554; Clay

vs. Smith, 3 Pet. 411; Beaupre vs. Noyes, 138 U. S. 397, 401, and many others.

This case is substantially similar to one in which an alleged owner of land should complain that it has been taken from him by an illegal assessment, or by judgment without citation or other unconstitutional proceeding; and the State Court should find that he had never owned the land and hence dismiss his claims. If parties so held to be without title were permitted to bring to this Court such suits, its docket would be filled with the vexatious proceedings of mere interlopers.

A large portion of the brief of plaintiff in error is devoted to an attempt, precisely similar to many others which have been fruitlessly made in previous similar cases before this Honorable Court, to introduce federal questions into the case, on the ground that the land in question was originally acquired by the State from the United States. As both parties admit this, and claim from the State, the title of the State to all the land in dispute is not, and never could be, in issue between them. We quote the following language, directly applicable, from the decision in Mace vs. Merrill (119 U. S. 581, 584):

"Both claim under the State. If Merrill actually did buy, as he says he did, the title of the State enured to his benefit, under the Act of Congress, as soon as it passed from the United States. If he did not, then, so far as the record discloses, Mace might have had the right to buy when he made application for that purpose. The determination of this question, as the case comes here, involves no Federal right in Mace which has been denied him by the decision of the court below. We consequently have no jurisdiction, and the cases of Romie vs. Casanova, 91 U. S. 379; McStay vs. Friedman, 92 U. S. 723, and Hastings vs. Jackson, 112

U. S. 233, are directly to that effect. Indeed, the case of Hastings vs. Jackson is strikingly like this in its material facts. The writ of ertor is dismissed for want of jurisdiction."

We quote the syllabus in the above case:

"As it appears that the right of the State of California to have the lands, which are in dispute in this action, listed is admitted, it is held that this Court is without jurisdiction over the judgment of the Supreme Court of California upon the adverse claims of the parties. Hastings vs. Jackson, 112 U. S. 233, affirmed."

ON THE MERITS.

1. The question of the meaning and construction of the patent to White is one of purely local law, and must be controlled by the jurisprudence of Louisiana. That jurisprudence has been settled by the case of State vs. Buck et als., 46 La. An. 656 *et seq*. What that case decided was, not that the State could recover a surplus of lands sold under such a patent, but that such a patent covered only the precise acreage called for therein, and that, where not properly described, it must be located by the map. That patent was precisely similar to this. As to identification by the map, and the *map being part of the patent*, the general jurisprudence is the same as that of Louisiana. See Craigin vs. Powell, 128 U. S. p. 691; Gazzam vs. Phillips, 20 Howard, 374; Hardin vs. Jordan, 140 U. S. 400.

2. There is, however, little need for construction in the matter. The only map in existence was Connelly's map, bearing upon it a diagram of surveyed lots and a tract of unsurveyed sea-marsh, which, as shown by a glance, cer-

tainly did not extend even to the middle of the township. This tract contained substantially 3840 acres. White bought 3840 acres of unsurveyed sea-marsh behind the front lots "as per official map;" his name was written on the Connelly map, with a reference to his patent; and he filed this map, with his name so on it, with his pleadings. This map, limiting his pleadings, does not even purport to reach to where Mr. Leovy's lands begin.

3. But if the map be disregarded, White's patent is not voidable, but absolutely void on its face, for utter uncertainty and flagrant violation of the law. Not only all prior legislation but the very Act under which White purchased expressly required that public lands be sold by township, section and fractional section. Public lands of the United States and of all the States are sold in this manner. If the map of Connelly, referred to in plaintiff's pleadings and patent, and filed in evidence, be considered, as in State vs. Buck et als., such a certain location might be considered as a substitute for the full legal description. But a township necessarily covers some 23,000 acres of space; and it would be manifestly illegal, on the face of a patent, either to convey the whole township, as containing 3840 acres, or to sell 3840 acres of it without locating them. Such a sale is bad, in Louisiana, as a private sale. 5 La. An. 511; 10 La. An. 170; 10 La. Rep. 58. But it would be flagrantly bad as to public lands, in the face of laws requiring full and accurate descriptions. It may be here noted, as an example of the confusion that would result from such methods, that the judgment of the District Court in favor of White (who bought only 3840 acres, and claimed in his supplemental petition only 3840

acres) not only ejected Mr. Leovy from some 5000 acres of land, in favor of White, but utterly failed to furnish any method of discriminating, in the future, White's lands from many thousands of acres not belonging to him, shown on a survey filed by his own surveyor. Yet this judgment still clung to the description of his land as 3840 acres; obviously because it would otherwise have been *ultra petitionem* and null on its face.

It seems clear, then, that to make out any distinct title at all for White it is necessary to have recourse to the Connelly map, and this is fatal to his claims. (As to need for description, see 4 Wheat. 488; 19 Howard, 342; 20 Howard, 372).

4. We have alluded again and again to White's pleadings as limiting his title. They are perfectly clear on this point; they clearly connect his title with the sea-marsh indicated in the Connelly plat; and taken in connection with his subsequent purchase of land in the rear of the township, show beyond dispute that his attempt to get a roving title with which to harass not only the defendant but all other future purchasers from the State was made only at the final hearing, after three years of litigation, in the face of patent, map, price, pleadings, evidence, and the jurisprudence, on the precise point, of the Supreme Court of Louisiana.

The Supreme Court decided, simply and purely, that White bought only 3840 acres of land, and that the boundary of his land was that fixed in the plat by which he bought, referred to in his patent, and thus made part of the patent itself. This involved no federal question.

As we have seen, all the issues of this case were pre-

sented in that of the State vs. Buck (46 La. An. 656). The words of the patent and the plan were the same, and his land adjoined the land claimed in this case. The patentee had bought a strip of sea-marsh, containing 1320 acres, and paid for only 1320 acres, and yet claimed the whole township, as plaintiff claims in this case. The Court disposed of plaintiff's contention in these words: "The Register sold to him 1320 acres of land at twenty-five cents per acre, *and that is the quantity the patent conveyed* to Packard, and no more." (Packard was plaintiff's vendor). It is inconceivable that the Register can convey more of the State land than the purchaser pays for. In this case plaintiff paid for 3480 acres, and asks to be recognized as owner of a whole township, including 5020 acres bought by the defendant; the remaining land belonging to the State.

Much of the swamp land granted to Louisiana by the Act of 1849 can be made valuable by judicious drainage for the cultivation of rice and, on the banks of the streams, for orange orchards and truck farming; for which, in the extreme South, the climate is peculiarly adapted.

Respectfully submitted,

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